



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**  
H.B. NO. 2561, RELATING TO THE ADMINISTRATION OF JUSTICE.

**LATE**

**BEFORE THE:**  
HOUSE COMMITTEE ON JUDICIARY

**DATE:** Friday, February 5, 2016 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Attorney General opposes certain parts of this bill.

The purpose of this bill is to enact the recommendations of the 2015 Penal Code Review Committee.

The Attorney General opposes the amendments proposed in part V of the bill by sections 37 to 39 (pages 72-74), which increase the threshold dollar amounts for the offenses of Theft in the Second Degree, Theft in the Third Degree, and Theft in the Fourth Degree. And the Attorney General opposes the amendments proposed in part VIII of the bill by sections 52 to 56 (pages 93-100), which eliminate mandatory sentencing provisions for the methamphetamine trafficking offenses.

In part V, the bill increases the threshold value of property and services from \$300 to \$750 for the offense of Theft in the Second Degree, and from \$100 to \$250 for the offense of Theft in the Third Degree. The bill also increases the maximum value of property and services for Theft in the Fourth Degree from \$100 to \$250. The Attorney General opposes these amendments.

The threshold values for these theft offenses should not be increased. The current values of \$300 and \$100 are appropriate amounts. To put it in perspective, the state minimum wage was \$6.25 per hour in 2003. The current minimum wage is \$8.50 per hour. Currently, a minimum wage worker would have to work at least forty hours, over a full week, to replace property worth \$300. The \$300 felony theft amount is still a very significant amount. To make

\$750 (pretax), a minimum wage worker would have to work eighty-nine hours, or over two weeks. That would be half of the worker's monthly salary before taxes and other deductions.

Increasing the theft threshold value from \$300 to \$750 would diminish the seriousness of many theft crimes and reduce the deterrent impact of the theft offenses. Under this bill, theft of property or services valued between \$250 and \$750 would only be a misdemeanor offense. As such, the many convicted misdemeanor offenders, who are felony offenders under the current law, would not receive the level of appropriate treatment, counseling, and supervision that they would otherwise receive from felony probation services. This bill would reduce the deterrent effect against crime, while at the same time reducing the level of services to offenders, and thereby likely increase the rate of recidivism and the number of victims. Thieves know the difference between misdemeanor and felony offenses. With the proposed amendments, thieves will know that they can steal up to \$750 in property without triggering felony prosecution. Property owners, small business owners in particular, will suffer much greater losses, and will be unlikely to pass on all of those losses to their customers.

In part VIII, the bill eliminates mandatory sentencing provisions for the methamphetamine trafficking offenses. The Attorney General opposes these amendments, which will significantly reduce the consequences of trafficking methamphetamine. Methamphetamine, often called “ice”, is one of the most commonly abused drugs in Hawaii, and by far the most dangerous. Ice destroys families, destroys lives, and frequently is a factor in many violent and property crimes. Traffickers have to obtain the methamphetamine somehow, and manufacturers of methamphetamine further expose the public to dangers. The manufacture of methamphetamine involves precursors and by-products that are so toxic, and potentially so explosive, that innocent children and adults living in the neighborhood could be poisoned or injured by being in the vicinity of the manufacturing operation.

Section 52, on pages 93-96, amends the offense of Methamphetamine Trafficking in the First Degree by removing from its definition: (1) the possession of one ounce or more of methamphetamine; and (2) the distribution of one-eighth of an ounce or more of methamphetamine. Those prohibitions are then added, in section 54 of the bill, at pages 97-98, to the offense of Promoting a Dangerous Drug in the First Degree. These amendments would allow someone who committed these methamphetamine trafficking offenses to get probation.

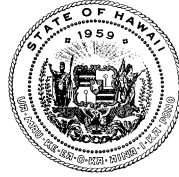
Under current law, these trafficking offenders would be sentenced to indeterminate terms of imprisonment.

In section 56, at pages 99-100, the bill repeals the offense of Methamphetamine Trafficking in the Second Degree. That offense prohibits the distribution of methamphetamine in any amount; and someone convicted of that offense must be sentenced to an indeterminate term of imprisonment, with a mandatory minimum term of imprisonment ordered by the court. By repealing this offense, a person who distributes any amount of methamphetamine will be eligible for probation.

The current methamphetamine trafficking offenses were adopted in 2006 to address the serious problem of methamphetamine abuse in our community. Methamphetamine has ruined many lives. The trafficking offenses were intended to target the distributors and sellers who were providing the drug to vulnerable individuals, getting them addicted to the substance, and making profits from their addiction. This bill will allow these traffickers to get probation.

The Attorney General opposes the amendments proposed in part V of the bill by sections 37 to 39, which increase the threshold dollar amounts for theft offenses, and opposes the amendments proposed in part VIII of the bill by sections 52 to 56, which eliminate mandatory sentencing provisions for the methamphetamine trafficking offenses.

The Attorney General supports the rest of the bill.



**STATE OF HAWAII  
DEPARTMENT OF HEALTH**

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**Testimony SUPPORTING HB2561  
Relating to the Administration of Justice**

REPRESENTATIVE KARL RHOADS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: February 5, 2016, 2:00 p.m. Room Number: 325

1 **Fiscal Implications:** Although positive fiscal impacts are not the primary focus of this bill, a  
2 continuation in the increased rate of admissions to the Hawaii State Hospital (HSH) is possible if  
3 this measure is not adopted, and concomitant increased expenditures and pressure on the HSH  
4 budget.

5 **Department Testimony:** The Department of Health (DOH) supports this measure.

6 The purpose of this bill is to enact recommendations of the penal code review committee  
7 convened pursuant to HCR155, SD1 (2015) including changes HRS §704-404, HRS §704-411,  
8 HRS §704-712, HRS §704-713, and HRS §704-415.

9 Generally, the DOH supports the enactment of the changes made by the penal review  
10 committee with regards to the statutes and will comply with these provisions should the measure  
11 be enacted. We note several instances where the phrase “from within the department of health”  
12 in reference to an examiner designated by the director of health in felony cases is deleted. We  
13 understand that this provision to repeal the requirement that one member of the panels be  
14 appointed from with the department is temporary and that mandatory participation in forensic  
15 examinations by a state designated examiner from within the department will be restored in two

1 years. We understand that the intent of this provision is to provide flexibility in assigning court  
2 ordered evaluations received by the department during a limited period of time while addressing  
3 personnel shortages. If this provision is enacted, the director will utilize the provided discretion  
4 in assigning cases, if indicated, during this period and will remain committed to build the  
5 workforce of employed examiners within the department who provide services pursuant to HRS  
6 §704.

7 Thank you for the opportunity to testify.

8 **Offered Amendments:** None.

DAVID Y. IGE  
GOVERNOR



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**CRIME VICTIM COMPENSATION  
COMMISSION**

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TESTIMONY ON HB 2561  
RELATING TO THE ADMINISTRATION OF JUSTICE

by

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

House Committee on Judiciary  
Representative Karl Rhoads, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Friday, February 5, 2016; 2:00 PM  
State Capitol, Conference Room 325

Good afternoon Chair Rhoads, Vice Chair San Buenaventura and members of the House Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in strong support, with exception to sections 52-56 relating to methamphetamine, of House Bill 2561 relating to the Administration of Justice.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available from the Commission. In 2003, the Commission undertook the Restitution Recovery Project to disburse restitution payments collected from inmates and parolees to their crime victims or to the Commission in cases where the Commission has previously paid a compensation award to the crime victim.

In 2015, the Commission was selected to serve as a member of the Committee to Review and Recommend Revisions to the Hawai'i Penal Code (Penal Code Committee). The Commission's role as a member of the Penal Code Committee was to represent the crime victim service community. As part of that role, the Commission solicited input from victim service providers and advocates to identify key issues and concerns specific to the penal code. The Penal Code Committee's recommendations became the basis for this bill.

The Commission strongly supports the recommendations of the Penal Code Committee except for the provisions relating to methamphetamine and would like to provide comments on five provisions of the bill that have significant importance to crime victims.

### PRIORITY OF PAYMENT OF COURT-ORDERED FEES AND FINES

As a housekeeping matter, sections 14, 25, 26, 27, and 28 places the priority of payment of fees and fines in a new section of chapter 706 and deletes the priority of payments in individual sections of chapter 706. Currently, the priority of payment of court-ordered fees and fines are set forth in multiple sections of the penal code with inconsistent wording. This bill places the priority of payment in a single statute and deletes payment priorities in the various statutes. This will prevent confusion and the need to restate payment priorities when statutes for fees or fines are amended or added.

### PARENTS OF MINOR VICTIMS WILL BE ALLOWED ALLOCUTION

Section 17 of this bill amends HRS § 706-604 to ensure that victims will be given the opportunity to speak to the court prior to the defendant being sentenced. The proposed amendment also permits a minor victim's family to speak at sentencing. Minors, as a result of their age, are often unable to fully describe to the court how the crime affected them and to express what sentence they wish for the defendant to receive. Allowing the victim's family to speak in addition to the minor, ensures that the court fully understands the impact of the crime on the minor, the minor's feelings on punishment, and the full extent of restitution.

### RESTITUTION WILL BE COLLECTED FROM INMATES IN ACCORDANCE WITH HRS § 353-33.6

Section 61 and section 24 of this bill amends HRS § 353-22.6 and HRS § 706-646, respectively, to clarify that that restitution will be collected from the defendant in accordance with Hawaii Revised Statutes (HRS) § 353-22.6 and any court-ordered restitution payment schedule is suspended while a defendant is in the custody of the Department of Public Safety (PSD). As part of the Justice Reinvestment Act that went into effect on July 1, 2012, HRS § 353-22.6 was amended to increase the collection by PSD of restitution from inmates from 10% of earnings to 25% of an inmate's wages, deposits and credits to satisfy any outstanding restitution order. The amendment went into effective on July 1, 2012, however, the court restitution orders after July 1, 2012, did not always conform to the new law.

As the clearinghouse for restitution payments collected from inmates and parolees, the Commission receives court judgments containing restitution orders that are inconsistent with HRS § 353-22.6. In a 2013 study of restitution orders for Halawa inmates, the Commission found that 28.9% of the orders were not in compliance with HRS § 353-22.6. The Office of the Attorney General advised PSD that PSD must comply with the court orders instead of complying with the provisions of HRS § 353-22.6. This resulted in significant financial losses to the victims.

The following chart illustrates the real losses to crime victims when courts order restitution to be paid at a rate less than 25% of all earnings, deposits and credits. The chart presents the data for ten restitution orders imposed after July 1, 2012, that have restitution payment orders that are less than the 25% required by HRS § 353-22.6. In approximately two and a half years, the victims of these cases should have received a total of \$5,518.40 instead of the \$172.97 ordered by the courts.

CIRCUIT	SENTENCE DATE	RESTITUTION ORDERED	TOTAL INMATE EARNINGS	TOTAL INMATE CASH DEPOSITS	AMOUNT DEDUCTIBLE FROM INMATE	POTENTIAL DEDUCTIONS AUTHORIZED BY STATUTE	TOTAL LOSS TO CRIME VICTIMS AS OF 1/30/15
1st	4/23/2013	\$ 6,660.00	\$ 579.00	\$ 3,411.00	\$ 57.90	\$ 997.50	\$ 939.60
1st	10/30/2012	\$ 3,925.43	\$ 667.50	\$ 2,950.00	\$ 66.75	\$ 904.38	\$ 837.63
1st	3/12/2013	\$ 309.19	\$ 143.00	\$ 3,250.00	\$ 14.30	\$ 309.19	\$ 294.89
1st	1/28/2013	\$ 1,845.00	\$ 9.00	\$ 1,975.00	\$ 0.90	\$ 496.00	\$ 495.10
1st	7/17/2012	\$ 150,542.45	\$ 80.32	\$ 939.87	\$ 8.03	\$ 255.05	\$ 247.02
1st	8/6/2013	\$ 36,450.25	\$ 0.00	\$ 925.00	\$ 0.00	\$ 231.25	\$ 231.25
2nd	**8/2/2013	\$ 2,925.22	\$ 30.10	\$ 1,660.00	\$ 9.03	\$ 422.53	\$ 413.50
3rd	**11/2/2012	\$ 1,084.00	\$ 0.00	\$ 1,850.00	\$ 0.00	\$ 462.50	\$ 462.50
3rd	11/29/2012	\$ 440.00	\$ 160.56	\$ 2,915.00	\$ 16.06	\$ 440.00	\$ 423.94
5th	7/31/2013	\$ 14,874.28	\$ 0.00	\$ 4,000.00	\$ 0.00	\$ 1,000.00	\$ 1,000.00
Totals:		\$ 219,055.82	\$ 1,669.48	\$ 23,875.87	\$ 172.97	\$ 5,518.39	
Total Loss to Crime Victims as of January 30, 2015:							\$ 5,345.42

In the two cases indicated with \*\* next to the sentencing date, the restitution orders were corrected nunc pro tunc to the sentencing date. In theory, the loss to the crime victims should have been zero, however, PSD was unable to retroactively collect the restitution. Therefore, the losses reflected on the chart for those two cases are from the date of sentencing to the date the court filed the corrected restitution order. These two cases further illustrate the need for PSD to be able to follow HRS § 353.22.6 without regard to inconsistent court orders or having to wait for court orders to be corrected.

Through the collaborative efforts of the Judiciary, PSD, and the Commission, the number of restitution orders that are inconsistent with HRS § 353-22.6 have significantly decreased. However, the loss to crime victims if restitution is not collected at the statutory rate is significant and cannot wait for a court to correct the order. This bill will eliminate the need to correct restitution orders through the courts and the resulting delay in deducting the appropriate restitution payment from inmate accounts.



MARITAL STATUS OF VICTIMS OF SEXUAL ASSAULT IN THE THIRD DEGREE  
ELIMINATED AS AN ELEMENT THAT THE STATE MUST PROVE

Currently, to secure a conviction for Sexual Assault in the Third Degree involving sexual contact, the prosecutor must prove that the victim and the offender were not married. In many cases, this requirement requires a prosecutor to ask a minor child who may be as young as five whether he or she was married to the perpetrator. In addition, the requirement that the victim and perpetrator not be married fails to provide a spouse with the same protections that exist for an unmarried person. A person would be the victim of a Sexual Assault in the Third Degree if that person is forced to have sexual contact with the person's fiancé or fiancée an hour prior to their wedding. However, if the same act occurred immediately after the wedding, no crime would have occurred. Marriage should not create a license for a spouse to engage in unwanted sexual contact.

The proposed amendment in section 32 eliminates the unwarranted requirement of the parties being unmarried from the definition of Sexual Contact which would eliminate it as an element that must be proven for a conviction of Sexual Assault in the Third Degree.

METHAMPHETAMINE TRAFFICKING PROVISIONS SHOULD NOT BE CHANGED

The Commission opposes the modifications of the laws relating to methamphetamine set forth in sections 52 through 56. The use of methamphetamine results in high costs to the community both financially and in increased crime. Empirically, the Commission has found that methamphetamine use is often involved in assaults and domestic violence cases. In assault cases, where a motive for the violence is not apparent, methamphetamine usually appears to be the cause of the violence. Many domestic violence police reports start with the offender being high on methamphetamine. The use of methamphetamine results in high medical costs to the victims of the violence caused by methamphetamine use and to the user who suffers irreversible damage to the user's body and mind. In most cases, the medical costs for the user is passed on to the community.

Given the higher cost to the community, there is no justification to lower the sentencing penalties for methamphetamine dealers – those caught distributing methamphetamine or in possession of more than one ounce (considered to be an amount that a dealer would possess) of methamphetamine.

Thank you for providing the Commission with the opportunity to testify in strong support of House Bill 2561 except for the provisions relating to methamphetamine.

**Justin F. Kollar**  
Prosecuting Attorney

**Jennifer S. Winn**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

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**TESTIMONY IN SUPPORT (WITH AMENDMENTS) OF  
HB 2561 – RELATING TO THE ADMINISTRATION OF JUSTICE**

Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i

House Committee on Judiciary  
February 5, 2016, 2:00 p.m., Conference Room 325

Chair Rhoads, Vice-Chair San Buenaventura, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, offers the following testimony in support, with amendments, of HB 2561 – Relating to the Administration of Justice.

We were proud to participate as a member of the Penal Code Review Committee and its efforts resulting in the current proposed Bill. We applaud the efforts of all the participants and of Judge Steven Alm in working hard to achieve consensus in many critical areas. In most areas of discussion, consensus was achieved and necessary and desirable recommendations were arrived at. However, there were two areas of concern to our Office and to the other law enforcement agencies participating in the process that we wish to highlight in our testimony.

First, our Office opposes the provisions of Sections 37 and 38 that increase the dollar amount thresholds for Theft in the Second and Third Degrees. Theft from residents, visitors, and businesses remains a major law enforcement concern in our community and easing the offense thresholds would only exacerbate the situation and hinder law enforcement's ability to address the problem.

Second, our Office opposes the provisions of Sections 52-56 removing the current sentencing requirements for methamphetamine offenses. Methamphetamine remains a significant problem in our community and no

compelling reason exists to delete the currently applicable sentencing requirements.

Accordingly, we SUPPORT HB 2561 but recommend that it be amended to delete Sections 37, 38 and 52-56. We request that Your Committee PASS the Bill with the amendments as described herein.

Thank you very much for the opportunity to provide testimony on this Bill.

**LATE**

**Christopher T. Van Marter**  
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Chair Rhoads, Vice-Chair San Buenaventura, and fellow members of the House Committee on Judiciary, the White Collar Crime Unit of the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong opposition to Part V, Section 42** of H.B. 2561. That specific proposal was submitted by the penal code review committee.

Part V, Section 42 attempts to repeal subsection (a) of Section 708-893 of the Hawaii Revised Statutes (HRS), which reads: "A person commits the offense of Use of a Computer in the Commission of a Separate Crime if the person: (a) Intentionally uses a computer to obtain control over the property of the victim to commit theft in the first or second degree".

HRS Section 708-893 was originally enacted in 2001. Subsection (a) was added to HRS Section 708-893 in 2006. Subsection (a) was introduced during the 2006 legislative session as H.B. 2535 and S.B. 2434, and it was subsequently enacted into law on May 25, 2006, as Act 141. Significantly, no member of the 2006 legislature voted against the bills that ultimately became subsection (a) to HRS Section 708-893. No member of the 2006 House of Representatives and no member of the 2006 Senate voted against what became subsection (a) to HRS Section 708-893. Subsection (a) received unanimous support from every member of the 2006 legislature that was present to vote. It's unclear whether the penal code review committee was aware that the 2006 legislature unanimously approved the addition of subsection (a) to HRS Section 708-893.

In any event, since 2006, the legislature has taken a number of steps to strengthen Hawaii's computer crime laws. Indeed, since 2006, the legislature has updated every Hawaii computer crime law and strengthened the penalties for those crimes. Hawaii's updated computer crime laws now reflect the current view of the legislature and the general public about the seriousness of the problem of cybercrime.

That's why it was so troubling to see this proposal emerge from the penal code review committee. Simply put, the proposal to repeal subsection (a) to HRS Section 708-893 is a step backward. It will weaken Hawaii's computer crime laws – indeed, it will completely repeal one of the most important statutes that Hawaii has to address the problem of computer crime.

The rationale for the repeal of subsection (a) is found on page 70 of H.B. 2561. The rationale states, "[r]epealing a provision that subjects a person to a separate charge and enhanced penalty for using a computer to commit an underlying theft crime because it seems unduly harsh,

given the prevalence of ‘smart phones’ and other computer devices”. That is the sole justification for the repeal of a law that passed with unanimous support from the 2006 legislature!

The rationale for the repeal of subsection (a) is illogical and makes no sense. What does the prevalence of electronic devices have to do with how society views the seriousness of computer-facilitated crime? And, what does the prevalence of electronic devices have to do with how the legislature classifies criminal conduct that is facilitated by electronic devices? It doesn’t matter whether there are one million, one billion, or even one trillion electronic devices on Earth. There is simply no logical connection between how many devices there are on Earth and how society views the seriousness of those who use electronic devices to facilitate fraud, and how the legislature classifies criminal conduct that is facilitated by those electronic devices. Simply put, the prevalence of devices and how the legislature views the criminal use of those devices are two entirely separate issues. In short, H.B. 2561’s stated rationale for repealing subsection (a) to HRS Section 708-893 is unpersuasive and tenuous, at best.

The “Report of the Committee to Review and Recommend Revisions to the Hawaii Penal Code” dated December 30, 2015 (hereinafter “Report”), offered the same rationale, i.e., citing the “prevalence of electronic devices” argument. *See infra*. But, the Report added another rationale. On page 51, the Comment states, “The removed offenses, first and second degree theft, are already subject to prosecution as a class B and C felony, respectively”. However, that’s another non sequitur. It simply doesn’t follow that, since first and second degree theft are already subject to prosecution as a class B and C felony, subsection (a) to HRS Section 708-893 should therefore be repealed. Indeed, if the Comment’s rationale was valid, it would be a justification to repeal the entire statute, not just subsection (a). Why? Because, every “separate crime” that is set forth in HRS Section 708-893 is “already subject to prosecution” as a stand-alone crime – not just first and second degree theft, but all nine of the crimes that are set forth in subsection (b) are “already subject to prosecution” as stand-alone crimes. Thus, it’s not surprising that the statute is called “Use of a Computer in the Commission of a Separate Crime”. By definition, every “separate crime” is a crime that is “already subject to prosecution” as a stand-alone crime. But, that’s not a logical or coherent rationale for repealing only a selective portion of the statute.

Respectfully, the Comment seems to miss the point of HRS Section 708-893. HRS Section 708-893 was enacted because society, through their elected representatives, views the use of a computer in the commission of certain crimes as an aggravating circumstance that warrants an increased penalty. That’s why the legislature chose to classify the crime as “one class or grade, as the case may be, greater than the offense facilitated”. *See* HRS Section 708-893(2). In short, the whole point of HRS Section 708-893 is to treat the use of a computer as an aggravating circumstance, just like the legislature treated the misuse of “personal information” as an aggravating circumstance when it adopted Hawaii’s identity theft laws. When the legislature enacted Hawaii’s identity theft laws, it chose to subject the offender to increased penalties for committing first and second degree theft. Why? Because, the legislature deemed the use of “personal information” to facilitate theft an aggravated form of theft. Similarly, when the legislature adopted subsection (a) to HRS Section 708-893, it deemed the use of a computer to facilitate theft an aggravated form of theft, and accordingly, like the identity theft statutes, provided for increased penalties. To reiterate, every member of the 2006 legislature who was

present to vote, in fact voted to support the bills that added first and second degree theft to HRS Section 708-893.

The Comment also points out that, by adding first degree theft to HRS Section 708-893, the legislature increased the penalty for first degree theft from a class B felony to a class A felony when a computer is used to facilitate the theft. However, that fact was well known to the 2006 legislature. Indeed, it was brought to the attention of the legislature by the written testimony submitted by the Office of the Public Defender. Their written opposition, notwithstanding, the 2006 legislature voted to add first and second degree theft to HRS Section 708-893. In short, the Comment to the 2015 Penal Code Review Committee Report regarding the increased penalties for first degree theft constitutes old information that was considered and rejected – unanimously!

The Comment also indicates that, “due to time constraints”, the committee did not review statistics about the prosecution of subsection (a) to HRS Section 708-893. Had the committee requested, the Department of the Prosecuting Attorney for the City and County of Honolulu would have provided the following statistics for the period from 2006, when subsection (a) was enacted, through February 2016:

- 51 – Total cases referred for prosecution
- 11 – Total cases where prosecution was declined
- 40 – Total cases charged (40 defendants)
- 15 – Total defendants who received either a DAG (5) or DANC (10) plea
- 10 – Total defendants who were sentenced to probation
- 5 – Total cases that were dismissed as part of a plea agreement
- 9 – Total defendants sentenced to prison (5: 20 years, 3: 10 years, 1: 8 years youthful)

Note: Of the 9 sentenced to prison, 3 had a prior felony record and were therefore not eligible for probation

- 1 – Total cases pending prosecution.

As these statistics demonstrate, of the 40 defendants charged with committing the offense of Use of a Computer in the Commission of a Separate Crime, 30 received either a deferral of their plea, probation, or had their computer charged dismissed altogether as part of a plea agreement. In other words, 75% of all defendants charged with Use of a Computer did not receive a prison term. Put differently, only about 25% received a prison term, and of the 9 who did receive a prison term, 3 of them were ineligible for probation based on their prior felony record. And, 3 of the 9 had their sentenced reduced to 10 years as part of a plea agreement. In short, a total of 9 defendants have been sentenced to prison since 2006. That equates to an average of 1 defendant per year since subsection (a) was added to HRS Section 708-893 in 2006.

Clearly, subsection (a) is not contributing in any meaningful way to Hawaii's prison over-population problem. 1 person per year! As the statistics clearly show, 3 out of 4 defendants are being sentenced to court-supervision, as opposed to prison. And, regarding the 9 defendants who received a prison term, the facts in those cases showed that the defendants' criminal conduct was especially egregious and involved repetitive conduct, multiple victims, high-dollar losses, additional charges, and/or a complete unwillingness to take responsibility or make restitution.

But, how did the Hawaii Paroling Authority (HPA) treat those 9 defendants who were sentenced to prison for committing the offense of Use of a Computer in the Commission of a Separate Crime? According to HPA's Annual Reports for the years 2007 through 2014, the HPA set the following minimum prison terms for inmates convicted of the offense of Use of a Computer in the Commission of a Separate Crime:

2007 – No parole action taken. 0 inmates were covered by HRS Section 708-893

2008 – 1 person. Minimum: 10 years

2009 – No parole action taken. 0 inmates were covered by HRS Section 708-893

2010 – No parole action taken. 0 inmates were covered by HRS Section 708-893

2011 – 1 person. Minimum: 1.5 years

2012 – 1 person. Minimum: 8 years

2013 – 7 people. Average minimum: 3.5 years

2014 – 2 people. Average minimum: 5.75 years

2015 – HPA's Annual Report not yet available.

As HPA's statistics reflect, with the exception of the 2008 inmate, the remaining inmates have been ordered to serve an average prison term that is less than one-third of their maximum sentence. To put these statistics in perspective, therefore, during the period from 2007 to 2014, only 12 people statewide were sentenced to prison for committing the offense of Use of a Computer in the Commission of a Separate Crime, and all but one of those will be eligible for parole after serving only about one-third or less of their sentence! Clearly, HPA's statistics refute any suggestion that subsection (a) to HRS Section 708-893 is "unduly harsh". In fact, the statute is fair and just, and defendants are being treated equitable, notwithstanding their serious criminal conduct.

HPA's statistics, combined with the statistics from the Honolulu Prosecutor's Office, demonstrate that, since subsection (a) was added to HRS Section 708-893 in 2006:

(1) 75% of the defendants who were charged with committing the offense of Use of a Computer in the Commission of a Separate Crime were sentenced to court supervision or had

their charge dismissed entirely as part of a plea agreement;

(2) Only about 25% of those who were charged with committing the offense of Use of a Computer in the Commission of a Separate Crime were sentenced to prison;

(3) Of the 25% who were sentenced to prison, about half had their charges reduced as part of a plea agreement or were ineligible to receive a sentence of probation; and

(4) Of the 12 inmates statewide who were sentenced to prison, almost all of them were ordered to serve only about one-third of their sentence before becoming eligible for parole.

Had the Penal Code Review Committee had access to these statistics, it's inconceivable that they would have deemed the statute "unduly harsh". On the contrary, these statistics demonstrate that the statute is both fair and just, and that it is being applied in a fair and equitable manner by the courts, the paroling authority, and law enforcement.

Lastly, it's worth pointing out that the Comment emphasized that a "significant minority" of the committee was opposed to repealing subsection (a) to HRS Section 708-893. The law enforcement stakeholders in particular opposed the repeal of subsection (a) to HRS Section 708-893.

In conclusion, Part V, Section 42 is a controversial measure, and is strongly opposed by law enforcement. It attempts to undo the unanimous vote of the 2006 legislature, based on a razor thin, entirely unpersuasive rationale. Therefore, that specific measure should be rejected.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly opposes the passage of Part V, Section 42 of H.B. 2561. **The Department of the Prosecuting Attorney respectfully requests that you strike and remove Part V, Section 42 from H.B. 2561,** and that you reject the recommendation to repeal subsection (a) to HRS Section 708-893. Thank you for the opportunity to testify on this matter.



DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE KARL RHOADS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawai`i**

February 5, 2016

**RE: H.B. 2561; RELATING TO THE ADMINISTRATION OF JUSTICE.**

Chair Rhoads, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support, with amendments, of H.B. 2561.

Thank you for the opportunity to participate as members of the Penal Code Review Committee. Each member committed an extraordinary amount of time and effort in construction of this bill and our Department would like to commend all the members for their dedication to this important area of law.

Areas for Amendments:

Section 37-41 (pg. 72-77), would increase the dollar amount thresholds for multiple types of theft. Such drastic increases will negatively impact local retailers—including many small business owners—as they will be increasingly victimized by repeat or 'professional' offenders, who are clearly aware of these threshold values. The impact on individual victims will also be significant, as the average citizen who works for minimum wage in Hawaii must work nearly 40 hours to earn \$300, for example; but they would have to work nearly 100 hours to earn \$750. Ultimately, these increases will lead to our legitimate, law abiding citizens suffering greater harms, and will hinder law enforcement in their efforts to protect not just business owners, but also tourists and members of our communities.

Section 52-56 (pg. 93-100) would remove the current sentencing requirements for methamphetamine offenses. Since the introduction of methamphetamine to Hawaii, this drug has torn apart countless families and left entire neighborhoods in disrepair. Today,

methamphetamine continues to have the same destructive force that it did when these laws were initially passed, unlike any other drug in Hawaii, and there is no compelling reason to remove the specialized sentencing requirements that were designed to address this epidemic.

Section 20 (pg. 35-45) would remove § 712-1243 H.R.S., Promoting a Dangerous Drug in the Third Degree (hereinafter referred to as PDD3), from the repeat offender mandatory minimum imprisonment statute. For those with substance abuse issues, our Penal Code already provides multiple opportunities for diversion, treatment, deferral and/or expungement, which would likely be long before offenders reach the level of qualifying for these particular sentencing provisions. If substance abuse and other criminal activity continue to be a problem, retaining PDD3 in this statute precludes offenders from committing further serious crimes, ensures greater public safety, and makes it much more likely that such offenders will receive necessary treatment.

Section 44 (pg 79-84) attempts to clarify when the offense of Abuse of Family or Household Member (§ 709-906 H.R.S.) occurs in the presence of a minor. Although our Department supports this intent, we believe a more effective method would be to add the definition of “in the presence” that is currently found in § 706-606.4, H.R.S., or perhaps add a reference thereto. Currently, our courts are forced to reach across chapters to utilize this section, which is a sentencing statute. Our Department believes that creating a new definition for “in the presence” by adding the phrase “audio and visual” would likely complicate cases involving § 709-906, H.R.S., to the extent this differs from the definition in § 706-606.4, H.R.S.

Sections 31-34 (pg. 61-66) would add a marriage exception to the charge of sexual assault in the fourth degree. Unwanted sexual contact by any individual should not be acceptable in any situation or circumstance. Adding a marriage exception to sexual assault in the fourth degree would essentially allow non-consenting spouses to be victimized by unwanted sexual contact, where no such exception exists for unwanted sexual contact between romantic partners who are unmarried, other acquaintances or strangers.

Section 42 (pg. 77-78) would repeal § 708-893(a), H.R.S., which addresses the “cybercrime” version of theft. This statute was originally enacted in 2001, and subsection (a) added in 2006, with the unanimous approval of the Legislature, in recognition of the devastation that these types of crimes have on victims. Since 2006, the Legislature has taken additional steps to strengthen Hawaii’s computer crime laws, to reflect the seriousness of cybercrime occurring throughout Hawaii. By repealing this section, it would severely weaken Hawaii’s computer crime laws by eliminating one of the most important statutes that Hawaii has to address the problem of computer crimes

Section 10 (pg. 25-26) seeks to make an amendment that would allow the court the option of temporarily hospitalizing a defendant rather than revoking the defendant’s conditional release. This amendment is in place to ensure that a defendant is not required to restart the long tedious process of return to conditional release if temporary hospitalization to stabilize the defendant is required. Although this amendment ensures judicial efficiency, our Department would urge this committee refrain from setting a maximum one (1) year and determine the amount of time of hospitalization on a case-by-case review by the court.

Section 60 (pg. 103-105) attempts to clarify and ensure that restitution is to be deducted at a rate of 25% from an inmate's account that is earned or deposited or credited to the account while incarcerated. Although the language in §353-22.6 H.R.S. which reads, "Notwithstanding any law to the contrary" appears to provide sufficient clarity, our Department urges this committee to consider the additional term "order" to ensure completeness. §353-22.6, H.R.S. should then read, "Notwithstanding any law or order to the contrary".

Section 65 (pg. 112-123) sets out to make non-substantive amendments which attempts to simplify §806-83, H.R.S., which establishes the offenses that can be charged by information. However, the initial proposal by the Penal Code Committee was to create a list the offenses that could not be charged by information due to the fact that there are significantly more charges that are currently encompassed by §806-83, H.R.S. and additional charges that could later be added to the list of offenses that can be charged by information. Therefore, by amending §806-83, H.R.S. to include only the offenses that cannot be charged by information would not just simplify the statute but would also allow for flexibility to include future offenses as needed.

#### Areas of Support:

Section 59 (pg. 103) would clarify the definition of the term "Alcohol". The current definition includes a list of five (5) different forms or molecular compounds which relate to alcohol. However, the list currently contains items that are poisonous when ingested or are easily covered under the more familiar term proposed, ethanol. This proposal does not change the current definition of "Alcohol" but merely clarifies and simplifies the current definition.

Section 51 (pg. 93) would remove any ambiguity between § 712-1200, H.R.S., subsections (1)(a) and (1)(b), and ensure conformance with the legislative intent articulated by the Legislature, in its 1990 and 2012 amendments. The proposed changes would ensure that "prostitutes" charged under § 712-1200(1)(a), H.R.S. and "johns" charged under § 712-1200(1)(b), H.R.S. would be legally distinguishable, and further ensure that the legislative intent to exclude anyone convicted of § 712-1200(1)(b), H.R.S. from deferral, under § 853-4, H.R.S., would be upheld.

Section 68 (pg. 128-132) would add the phrase, "or no contest plea," to subsection (11) and (12) of the deferral provisions. Although our Department does not believe that there exists a loophole in which a defendant may receive a deferral on two separate occasions, this change may help to clarify the intent that a defendant can only receive a deferral on one occasion, whether that be a deferral of a plea of guilty or deferral of a plea of no contest.

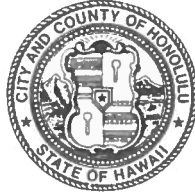
For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 2651 with amendments. Thank you for this opportunity to testify on this matter.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

**LATE**

KIRK CALDWELL  
MAYOR



LOUIS M. KEALOHA  
CHIEF

MARIE A. MCCAULEY  
CARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE RS-SAI

February 5, 2016

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

**Subject: House Bill No. 2561, Relating to the Administration of Justice**

I am Roy Sugimoto, Major of District 1 of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Part V, Section 37, specifically 708-831, Theft in the Second Degree, under House Bill 2561, Relating to the Administration of Justice. This bill will increase the monetary threshold to \$750 with regard to property and services.

We strongly oppose increasing the threshold amount for Theft in the Second Degree. There is a direct correlation between drug abuse and the offense of theft. Proceeds from misdemeanor theft offenses are used to fund illicit drug habits. Oftentimes we observe theft suspects in possession of drugs and drug paraphernalia. Also, misdemeanor theft offenders often do not qualify for programs such as Drug Court or HOPE probation. Prevention and treatment are important to reducing recidivism.

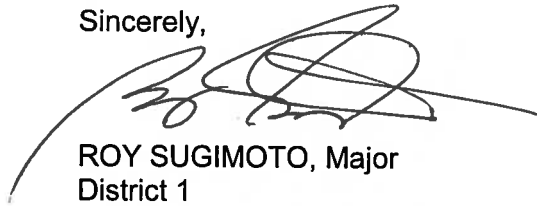
In the year 2014, the island of Oahu had a total of 1,014 shoplifting arrests. In 2015, the shoplifting arrests increased to 1,974, a 95 percent increase. The system in place has been effective and designed to ensure that the retailers and victims are treated with respect and dignity. Raising the monetary threshold will have a negative impact and increase victimization. Property crime suspects will become savvy to the new increase and will commit crimes just below the threshold amount to avoid felony prosecution.

The Honorable Karl Rhoads, Chair  
and Members  
Page 2  
February 5, 2016

The Honolulu Police Department respectfully opposes the passage of Part V, Section 37, specifically 708-831, Theft in the Second Degree, under House Bill 2561, Relating to the Administration of Justice. We firmly believe the judicial system in place is effective and having a positive effect on preventing recidivism.

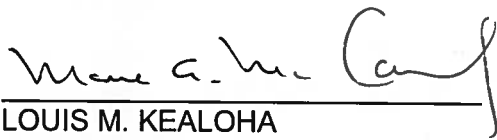
Thank you for the opportunity to testify.

Sincerely,



ROY SUGIMOTO, Major  
District 1

APPROVED:



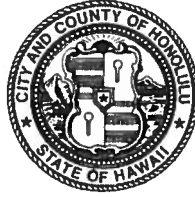
LOUIS M. KEALOHA  
for Chief of Police

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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**LATE**

KIRK CALDWELL  
MAYOR



LOUIS M. KEALOHA  
CHIEF

MARIE A. McCAULEY  
GARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE CK-TA

February 5, 2016

The Honorable Karl Rhoads  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 2561, Relating to the Administration of Justice

I am Calvin Tong, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Part VIII, Section 52, specifically 712-1240.7, and Section 56, specifically 712-1240.8, Methamphetamine Trafficking, in House Bill 2561, Relating to Administration of Justice.

This bill seeks, in part, to amend the methamphetamine trafficking sections in the Hawaii Revised Statutes. It is proposed that methamphetamine trafficking include only the act of manufacturing it. All other acts would be incorporated into the dangerous drug sections.

Methamphetamine is the most serious drug problem in Hawaii. Of all Schedule I drugs, methamphetamine is number one when it comes to the number of arrests and the amount seized. It is important to have distinct, separate sections to address the possession, distribution, and manufacture of methamphetamine so that the penalties imposed can reflect the seriousness of the offenses.

The Honolulu Police Department urges you to oppose Part VIII, Section 52, specifically 712-1240.7, and Section 56, specifically 712-1240.8, Methamphetamine Trafficking, in House Bill No. 2561, Relating to Administration of Justice.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

Handwritten signature of Louis M. Kealoha in black ink.

Louis M. Kealoha  
Chief of Police

Handwritten signature of Calvin Tong in black ink.

CALVIN TONG, Major  
Narcotics/Vice Division

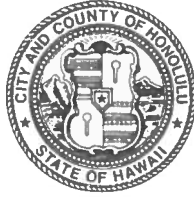
*Serving and Protecting With Aloha*

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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**LATE**

KIRK CALDWELL  
MAYOR



LOUIS M. KEALOHA  
CHIEF

MARIE A. McCAULEY  
CARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE JM-NTK

February 5, 2016

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

**SUBJECT: House Bill No. 2561, Relating to the Administration of Justice**

I am John McCarthy, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 2561, Part V, Section 42, which relates to the Use of a Computer in the Commission of a Separate Crime. This proposal was submitted by the penal code review committee.

Under this bill, Part V, Section 42, subsection (a) of Section 708-893 of the Hawaii Revised Statutes, would be repealed. More specifically, it would remove the enumerated offenses of Theft in the First and Second Degree from this section of the law.

This subsection received unanimous support when it was passed by the 2006 Legislature. The Legislature has consistently and progressively taken steps since then to strengthen and keep pace with technology as it pertains to its use in criminal activities. These laws recognized the severity and aggravating circumstances when computers are used to commit crime.

On page 70, lines 6 and 7 of House Bill No. 2561, the penal code review committee cites its rationale for repealing this subsection as "unduly harsh, given the prevalence of 'smart phones' and other computer devices." The prevalence of any item should not be the deciding fact of whether or not a law should be repealed. We would argue that the exact opposite is true. Because of the prevalence of such devices, we have seen an increase in its use to commit fraud, terroristic threatening, harassment, and sex crimes. These crimes would have not otherwise been committed without the use of such devices.

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
February 5, 2016  
Page 2

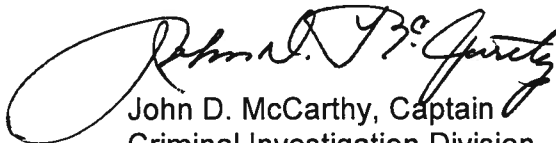
We are in agreement with the Department of the Prosecuting Attorney that these are aggravating circumstances that warrant an increased penalty and should be prosecuted as separate crimes. A comparison can be drawn to the time when the Legislature treated personal information as an aggravating circumstance when the identity theft laws were passed. The Legislature took this aggravating circumstance one step further when it passed legislation making the unauthorized possession of personal confidential information a class c felony.

The use of devices will continue to increase making it easier for persons to commit theft. It is not the proliferation of these devices that will make it easier and more frequent but the individual's choice to use these devices to hide behind the anonymity it creates along with the ease of access. In other words, these devices are a tool to commit more and more frequent the offense of theft and make it more difficult to identify and apprehend those offenders.

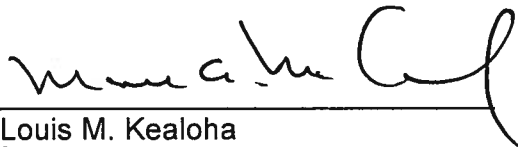
The Honolulu Police Department urges you to reject the recommendation and strike Part V, Section 42 of House Bill No. 2561, as stated on page 77 in lines 3 through 20 and on page 78 in lines 1 through 11.

Thank you for the opportunity to testify.

Sincerely,

  
John D. McCarthy, Captain  
Criminal Investigation Division

APPROVED:

  
Louis M. Kealoha  
Chief of Police



**LATE**

**Testimony in Support with Reservations for HB 2561-  
Relating to the Administration of Justice**

Hearing on: Friday, February 5, 2016, 2:00 pm  
Conference Room 325 of the State Capitol

TO: Committee on Judiciary  
Rep. Karl Rhoades, Chair  
Rep. Joy San Buenaventura, Vice Chair

FR: Alan Shinn, Executive Director  
Coalition for a Drug-Free Hawaii  
1130 N. Nimitz Hwy, Suite A-259  
Honolulu, HI 96817  
(808) 545-3228 x29

Please accept this testimony in support with reservations for HB 2561- Relating to the Administration of Justice, which enacts recommendations of the penal code review committee convened pursuant to HCR155, SD1 (2015).

The Coalition for a Drug-Free Hawaii (CDFH) supports sensible criminal justice reform and acknowledges the work of the penal code review committee to revise grades of offenses and punishment that were fair, look at cost effective ways in deterring crime, reduce recidivism, and provide means for victim restitution regardless of socioeconomic class or ethnicity.

Of concern is the elimination of minimum mandatory sentencing for methamphetamine trafficking per Section 712-1240.8 with the exception of distribution to a minor and/or manufacturing the drug in any amount per Section 712-1241.

Access and use of methamphetamine remain at elevated levels in Hawaii and the problem has over taxed law enforcement, the court system, probation, public safety, and drug prevention, treatment and other human service providers. For example, HB 2561 does not go far enough with a public health approach to addictions by making a serious investment in drug prevention and treatment services as alternatives to incarceration.

There simply are not enough drug prevention and treatment resources in the community to effectively deal with increased referrals from the court system. In addition, clean and sober living homes, recovery support services, and job development resources for this population are in short supply.

CDFH recommends a more comprehensive approach to the problem that would have a long term effect on access and use of methamphetamine in Hawaii. Thank you for the opportunity to submit testimony on HB 2561.





# THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

**LATE**

Executive Director  
Adriana Ramelli

DATE: February 5, 2015

Advisory Board

TO: The Honorable Karl Rhoads, Chair  
The Honorable Joy San Buenaventura, Vice Chair  
House Committee on Judiciary

President  
Mimi Beams

Vice President  
Peter Van Zile

Joanne H. Arizumi

FROM: The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women and Children

Mark J. Bennett

Andre Bisquera

RE: Testimony in Support of H.B. 2561  
Relating to the Administration of Justice

Marilyn Carlsmith

Senator  
Suzanne Chun Oakland

Good afternoon Chair Rhoads, Vice Chair San Buenaventura, and members of the House Committee on Judiciary.

Monica Cobb-Adams

Donne Dawson

The Sex Abuse Treatment Center (SATC) supports H.B. 2561, which enacts recommendations of the penal code review committee convened pursuant to H.C.R. 155, S.D. 1 (2015).

Dennis Dunn

Councilmember  
Carol Fukunaga

David I. Haverly

Please note that the SATC's following comments are limited to Part IV of H.B. 2561. This Part amends the definition of "sexual contact" in the context of Chapter 707 of the Hawai'i Revised Statutes (HRS) to eliminate a blanket exemption from the offenses of sexual assault for married people who subject their spouses to unconsented-to touching of intimate body parts. The amendments in Part IV would, however, maintain the exemption for married persons with respect to the crime of Sexual Assault in the 4<sup>th</sup> Degree.

Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Gidget Ruschetta

Joshua A. Wisch

The current law specifies that to be "sexual contact", the actor – the person initiating the touching of sexual or other intimate body parts – cannot be married to the other person who the actor is touching or is causing to touch the actor. This means that touching of intimate body parts between married spouses is not considered "sexual contact" for the purpose of defining crimes.

This has the perverse result of excusing married spouses from being accountable for various behaviors that would constitute sexual assault, and fails to protect victims of intimate partner sexual violence in the context of a marriage to their attacker in a manner that is grossly disproportionate to the protections afforded to their unmarried peers.

For example, a married person who knowingly subjects their spouse who is mentally defective, mentally incapacitated, or physically helpless to acts that would otherwise be considered sexual contact, would be excused from having committed Sexual Assault in the 3<sup>rd</sup> Degree (HRS Sec. 707-732(d)). Likewise, a married person who knowingly and by strong compulsion, such as the use of physical battery, a dangerous

instrument, or threat of bodily injury, forces their spouse to be subject to acts that would otherwise be considered sexual contact, would be excused from having committed Sexual Assault in the 3<sup>rd</sup> Degree (HRS Sec. 707-732(f)).

Exceptions to criminal statutes that allow married persons to force their spouses to have unwanted sexual contact without reprisal are based on the false and outdated legal notion that a marriage contract represents unconditional sexual consent by, and submission of, one spouse (historically, the wife) to the other. However, all fifty states have recognized, in banning penetrative rape in the context of marriage since the 1970s, that unwanted sexual activity in marriage can be a form of spousal abuse and domestic violence, and it is not an obligatory feature of the marriage experience that people, by default, consent to when they get married. There are many times in the course of any marriage where sexual contact may be unwanted and a violent, traumatizing affront to a non-consenting spouse.

An unlimited exception for married persons to have access to non-penetrative sexual contact with their spouses significantly disadvantages would-be victims who are married to their attackers relative to their unmarried peers, a deeply concerning equal protection issue. Although married persons are not a class to which harmful differences in protections provided by the law are automatically considered suspect, there is no rational basis for this drastically disparate treatment.

If the State of Hawai'i rejects a justification that marriage equals unconditional sexual access and consent, it makes no sense that a person on the day before their wedding may report their intimate partner to the police to seek protection against forcible sexual contact, but on the day after the wedding that same person would have no such recourse unless such sexual contact escalated to sexually penetrative rape.

The amendment to the Penal Code proposed in Part IV of H.B. 2561 would correct this imbalance in the current law with respect to the offense of Sexual Assault in the 3<sup>rd</sup> Degree by removing the language "not married to the actor" from the definition of "sexual contact," when describing a would-be victim of unwanted, unconsented to, and compulsory sexual contact.

Therefore, we respectfully urge you to join SATC in supporting the passage of this portion of H.B. 2561.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 04, 2016 11:57 AM  
**To:** JUDtestimony  
**Cc:** J9hathaway@aol.com  
**Subject:** Submitted testimony for HB2561 on Feb 5, 2016 14:00PM

**HB2561**

Submitted on: 2/4/2016

Testimony for JUD on Feb 5, 2016 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Janine	Individual	Oppose	No

Comments: I am strongly opposed to portions of this bill, mainly the relaxing of thresholds for theft in the 2nd & 3rd degrees. If anything, we need tougher sentencing of criminals, especially here on Kauai. Residents and visitors alike are now very aware that their sense of safety and well being are at risk, due to the very casual attitude of thieves of actually doing any time for their crimes. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 05, 2016 3:34 AM  
**To:** JUDtestimony  
**Cc:** shunt@aol.com  
**Subject:** Submitted testimony for HB2561 on Feb 5, 2016 14:00PM

**HB2561**

Submitted on: 2/5/2016

Testimony for JUD on Feb 5, 2016 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
steve hunt	Individual	Oppose	No

Comments: I am strongly opposed to more lenient sentences for crimes. The penalties should be harsher not easier. In our neighborhood criminals know that there is little risk if caught as the consequences and punishment is very soft. To be a detriment to crime the punishment must be more severe.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**LATE**



As a member of CAT, Citizens against Theives on Kauai, I oppose the provisions of Sections 37 and 38 that increase the dollar amount thresholds for Theft in the Second and Third Degrees. On Kauai, we have seen that theft from residents, visitors, and businesses remains a major law enforcement concern in our community. Decreasing the theft thresholds would only exacerbate the situation. Law enforcement's ability to address the problem would be hindered. Our judges have strived to make inroads against the break-ins and thievery on our islands. Punishment is a good deterrent to the crime.

On a separate issue, I oppose the provisions of Sections 52-56 removing the current sentencing requirements for methamphetamine offenses. Methamphetamine remains a very significant problem in our community, affecting not only the addicted; but his family and the preyed-upon community. I can see absolutely no compelling reason to delete the currently applicable sentencing requirements.

Accordingly, I SUPPORT HB 2561 but recommend that it be amended to delete Sections 37, 38 and 52-56. I back the request that Your Committee PASS the Bill with the amendments as described herein.

Pamela Warren

Resident of Kilauea, Kauai

808-635-4743

[paml@warren.net](mailto:paml@warren.net)



Sent from my iPad

